

REMARKS

This response is submitted within two months of the December 18, 2006 mailing of a final Office Action. Following entry of this amendment, claims 1-42, 44-47 and 51 remain pending in the application. Claims 1, 25, and 44 are independent. In the final Office Action, the Examiner:

- allowed claims 25-39 and 44-46
- indicated that claims 8, 22 and 23 would be allowable if rewritten in independent form;
- rejected pending claims 48-50 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement;
- rejected claims 1-4, 6, 7, 9-21, 24, 40-42, 47 and 51 under 35 U.S.C. § 103(a) as obvious in view of United States Patent Publication No. 2002/0156474 to Wack et al. (hereinafter "Wack") in view of U.S. Patent No. 6,719,759 to Wagner et al. (hereinafter "Wagner"); and
- rejected pending claim 5 under 35 U.S.C. § 103(a) as obvious in view of Wack in combination with both Wagner and U.S. Patent No. 6,572,622 to Schafer et al. hereinafter "Shafer").

Applicants have canceled claims 48-50 without prejudice. No new matter has been added. The claim amendments made herein do not represent acquiescence in the Examiner's rejections, but rather are made only to expedite prosecution of the present application. Applicants expressly reserve the right to pursue the subject matter of any previously presented claims in one or more continuation applications. As discussed more fully below, Applicants respectfully submit that each of the currently pending claims define features of the present invention that are not disclosed, taught or suggested by the prior art of record and respectfully requests allowance of same.

Claim Rejections - 35 U.S.C. § 103(a)

The Office Action cites Wack in combination with Wagner in rejecting each of claims 1-7, 9-21, 24, 40-42, 47 and 51 as obvious. Applicants respectfully submit that each of these obviousness rejections should be withdrawn because, pursuant to 35 U.S.C. § 103(c), Wagner

is disqualified as prior art used in an obviousness rejection.² In support of this statement, and pursuant to MPEP 706.02(I)(2)(II) applicants, by and through their attorneys, respectfully submit that:

Wagner and the present application were, at the time the invention of the present application was made, owned by, or subject to an obligation of assignment to, Synthes (U.S.A.).

Applicants further submit that the assignment records demonstrating that the present application and Wagner are commonly owned by Synthes (U.S.A.) have been recorded with the Patent Office at Reel 015266, Frame 0654, and Reel 012379, Frame 0592, respectively. Consequently, Applicants respectfully submit that the obviousness rejection of claims 1-7, 9-21, 24, 40-42, 47 and 51 should be withdrawn because Wagner is not available as prior art in this context.

Allowable Subject Matter

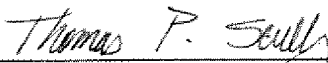
Applicants would like to thank the Examiner for the allowance of claims 25-39 and 44-46 and the indication that claims 8, 22 and 23 would be allowable if rewritten in independent form.

In view of the above amendments and remarks, Applicants respectfully request that the Examiner reconsider pending claims 1-42, 44-47, and 51 with a view towards allowance. The Examiner is invited to call the undersigned attorney at (212) 326-3939 if a telephone call could help resolve any remaining issues.

No additional claim fees are believed due with this submission. However, should any additional fees be required, please charge such fees to Jones Day deposit account no. 50-3013.

Respectfully submitted,

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² Wagner does not qualify as prior art to the present application under 35 U.S.C. § 102(b). Wagner could only qualify as prior art to the present application under 35 U.S.C. § 102(e) because Wagner was first published in the English language as U.S. Patent Publication No. US2002/0045901 on April 18, 2002, after the May 28, 2001 priority date of the present application.

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